

JUDICIAL SERVICE COMMISSION



ADDRESS BY THE HONOURABLE MR JUSTICE

LUKE MALABA,

CHIEF JUSTICE OF ZIMBABWE,

ON THE OCCASION OF THE OFFICIAL OPENING OF THE

2020 LEGAL YEAR ON 13 JANUARY 2020

THEME: JUDICIAL TRANSPARENCY AND

ACCOUNTABILITY

Salutations.

INTRODUCTION

Mr Prosecutor-General, Mr Attorney-General and Advocate Fitches, it is again that time of the year when stakeholders in the administration of justice gather to mark the commencement of the legal year. The objective of conducting the ceremony is to afford the Judiciary the opportunity to inform the public about the major achievements and challenges relating to the discharge of its constitutional obligations in the preceding legal year. The Judiciary is also afforded the opportunity to outline in broad terms the developmental programme for the next twelve months.

TRANSPARENCY AND ACCOUNTABILITY

The theme for this year is “**Judicial Transparency and Accountability**”. It resonates well with last year’s theme of consolidating the rule of law. The purposes and objectives of the rule of law as a foundational value and principle cannot be achieved by the guarantee and application of the fundamental principle of judicial independence only. Whilst an independent Judiciary is the essence of

the rule of law, it is the same Judiciary which is required to act in a transparent and accountable manner in the exercise of judicial functions.

Section 3(2)(g) of the Constitution declares the values and principles on which the Constitution is founded. It is to the effect that the Judiciary, as an organ of State, and courts, as institutions of Government, are bound in the discharge of the constitutional obligations imposed on them to act in accordance with the principles of “transparency, justice, accountability and responsiveness”.

In a constitutional State governed by the rule of law, the obligation the Judiciary owes to society is limited to applying the law with integrity in an independent and impartial way free of corruption.

The Judiciary’s accountability to society is made operative first and foremost by ensuring that judicial officers are accountable to the law. That means that they are required to explain their decisions based on the application of legal rules, through legal reasoning and findings of fact that are based on evidence and analysis. Their decisions can be

reviewed and, if necessary, corrected by the judicial hierarchy through a system of appeals.

Judicial independence is guaranteed as the essence of the rule of law on condition that the principles of transparency and accountability are observed in the performance of judicial functions. Hence the requirement under section 69(1) of the Constitution that every person accused of an offence has a right to a fair and public trial within a reasonable time before an independent and impartial court. Section 69(2) of the Constitution also provides that, in the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court. It is clear that section 69 (1) and (2) of the Constitution incorporates requirements relating to the application of the principles of transparency and accountability as integral aspects of the duty on the Judiciary to act in accordance with the law in the discharge of the judicial function.

A Judiciary in a modern democracy cannot claim the benefits of independence in its functioning without accepting the responsibilities associated with transparency and accountability. Focusing exclusively

on the aspect of judicial independence takes the focus away from the equally important principles of transparency and accountability in the functioning of the Judiciary. Functional independence without transparency and accountability is undemocratic. Demanding transparency and accountability of the Judiciary without a guarantee of functional independence is tantamount to demanding servitude.

In its ordinary sense, transparency connotes a condition or quality of action which allows an observer to easily see what is done and how it is done to decide for himself or herself whether what is done presents the truth and is consistent with a prescribed rule of conduct. It is the opposite of the conditions of secrecy and opacity, which prevent another person from seeing or having knowledge of what is done. In the context of the administration of justice, transparency guarantees freedom of access to court proceedings. Transparency entitles a person to have access to a courtroom and witness the actions and decisions being taken by the Judiciary in a manner that satisfies him or her that the judicial officer concerned is responsible for what he or she is doing.

In judicial parlance, accountability refers to a set of mechanisms designed to ensure that judicial officers perform the duties required by

their job in order to fulfil or further the goals set by the **Constitution**.

It also connotes full disclosure on the use of public resources and the consequences of failing to meet stated performance objectives.

Transparency and accountability are therefore concepts which obligate public officials to provide full information and to explain and justify their performance in the execution of functions assigned to them where it is necessary to do so. A system of accountability is executed through various mechanisms and reforms that ensure openness. The two concepts are mutually inclusive. Unless there is accountability, transparency is of little value. In the same vein, without transparency it becomes impossible to hold public officials to account.

Transparency is a priceless prerequisite for any modern judiciary. It operates as a mechanism of governance, administration and management by the Judiciary. It allows for control and participation by citizens in public matters. The administration of justice by the courts is one such public matter. Public power is exercised by the judiciary on behalf of the citizens.

Transparency and accountability foster within the public a sense of ownership and trust in government. The concepts reinforce the notion

that judicial officers are employees of the people. Public decision-making processes ought to reflect the will of the people. It is for this reason that section **162 of the Constitution** provides that judicial authority derives from the people of Zimbabwe. In that regard, citizens are major stakeholders in the business of the courts. The courts must therefore, from time to time, account to the citizens on how they are performing their functions.

Such is the importance of **transparency and accountability** that the preamble to the **Constitution** lists them amongst the values which need to be entrenched to guide institutions of the State at every level in the discharge of constitutional obligations. The preamble states that there is "the need to entrench democracy, good, **transparent and accountable** governance and the rule of law".

The concepts of **transparency and accountability** exist as indispensable components of democratic governance. Democratic governance, simply put, entails the system by which government and its institutions operate according to democratic processes and norms. **Transparency and accountability** are crucial in the maintenance of a

sustainable relationship of reciprocity and trust that must exist between the government and its people.

From this viewpoint, the Judicial Service Commission's ("the Commission") and the Judiciary's understanding of transparency is one of openness in relation to activities. It lays bare what is being done, where, how and for what reason and the results thereof. In the context of central government, transparency directly relates to the obligation by government to provide the public with access to information about the government. It is a duty to disclose on the part of the public office bearers and a right to demand disclosure on the part of the citizens. It plays the crucial role of countering private and public corruption, excesses in the use of public power. As a result, there is reduction of abuse of discretion and political manipulation. It protects individual rights and ensures the security of persons and their property. Public confidence in the integrity of government processes increases.

Transparency is particularly important in judicial institutions because it promotes accountability, combats corruption and helps to eliminate arbitrariness. Courts wield enormous power, the exercise of which can affect the interests of citizens. It becomes essential that the work of the

Judiciary is entirely transparent. **Section 191 of the Constitution** requires the Commission to conduct its business in a just, fair and transparent manner.

It is in recognition of the fundamental value derivable from acting in accordance with the principles of transparency and accountability that proceedings in all courts in Zimbabwe from the community courts to the Constitutional Court are required to be open to the public. The principle of open justice is recognised as a vital element in preventing perceptions of secrecy and lack of accountability. Perceptions of secrecy and lack of accountability can generate distrust and confusion amongst the public.

Transparency and accountability also require courts to provide reasons for their decisions through written judgments. Reasons for judgments enable litigants and members of the public to comment on the rationale of decisions. Members of the public are afforded the opportunity to form their own opinion on the efficiency and effectiveness of the judicial system. This is especially so in cases of public interest. In the same vein, the provision of judgments also allows a litigant who may be aggrieved with the decision of a court to exercise

his or her right of appeal against the decision, where such remedy is provided for by the law. Where a judgment is delivered *ex tempore*, it must be announced in open court. Where a judgment is written, it must be published including making it readily accessible to members of the public who may wish to have sight of it. The Commission will make written judgments on matters of national importance available on its website and in law reports.

The duty to give reasons is meant to prevent arbitrariness. It directly impacts on the constitutional right of citizens to a fair trial. Even from a common sense perspective, reasoned decisions are generally preferable to unreasoned ones. It is fair to inform affected individuals of the reasons for any action which has been taken against them. From a constitutional point of view, the provision of reasons is an important mechanism for making the courts accountable to the law and achieving the culture of justification.

By making judicial decisions readily accessible to citizens, legal practitioners and lower courts, judicial transparency fosters greater clarity and consistency in judicial decision-making. Greater

consistency enhances respect for and adherence to the law as well as confidence in the rule of law. (See: General International Development Law Organisation (IDLO): “*Enhancing Judicial Transparency and Promoting Public Trust*” 28 June 2018).

On the occasion of the opening of the 2019 legal year, I emphasised the point that criticism of court decisions ought to be made without being scurrilous about judicial officers. Vituperative outbursts against judicial officers have no place in any jurisdiction. It is not an acceptable method of seeking to bring the Judiciary to account. It only serves to scandalise the courts by impairing their dignity and integrity.

The Judiciary is alive to the public’s expectation of quality and timeous judgments from the courts. This is a requirement set out in section **164 of the Constitution**, which provides that the courts must apply the law impartially, expeditiously and without fear, favour or prejudice. The **Judicial Codes of Ethics** for both Judges and magistrates stipulate timelines which every judicial officer is expected to meet in relation to the delivery of judgments. In that regard, it has been impressed upon every judicial officer to comply with this obligation. I am aware of the concerns raised by some stakeholders and members of the public

regarding some judgments that have taken unduly long periods to be delivered. These concerns are merited and I give my assurance that they will be attended to without further delay.

Allow me to further advise that I meet with the Judge President of the High Court, the Senior Judge of the Labour Court, and the Judge of the Administrative Court, and the Chief Magistrate at least once every month. These meetings assess the operations of the courts and discuss the challenges which militate against justice delivery. It is through such engagements with the heads of the courts that challenges, including the tardiness of judicial officers in handing down judgments, are addressed. Robust mechanisms to monitor the delivery of all reserved judgments were recently put in place to curb the practice of reserving judgments beyond the time limits provided for by the law.

The concerns raised by litigants and other stakeholders about the long delays experienced in finalising cases in the Fiscal Appeals Court and the Tax Appeals Court, which form a Division of the High Court, are legitimate. I again fully acknowledge them and assure the nation that they are receiving due attention. The cases usually argued in those courts are invariably complex. They have serious ramifications on the

economic well-being of the country. The single Judge who was assigned to the Division was overwhelmed by the workload. In order to mitigate the challenges in that Division, various intervention measures have since been put in place. These include the appointment of Honourable Justices Ziyambi, Mtshiya and Ndou to act as Judges of that Division. The three are vastly experienced Judges who are expected to deal with the challenges militating against expeditious completion of cases. During the public interviews which preceded the appointment of the latest group of Judges of the High Court, the Commission took into account the expertise and experience in fiscal and tax law matters. The process to draft simplified and user-friendly rules of that court will commence shortly. I am convinced that the implementation of all these measures will significantly improve the operations of the two courts.

A judicial system that is transparent and accountable to the law is a *sine qua non* to the rule of law and the survival of any democracy. It is only a transparent and accountable Judiciary that will have the trust and confidence of the people. The Commission has placed these two concepts at the forefront of its activities in its quest to achieve world

class justice. The administration of justice requires **transparency and accountability** both in the courts and in the general administration of the courts. I therefore propose to share with the nation some of the initiatives taken to achieve this. I do so not only to account to the people on how the judicial authority is being managed but also to demystify court operations by making the public aware of what is happening in the courts and how the nation can hold the Judiciary to account.

LIVE BROADCAST OF COURT CASES

The broadcasting of court proceedings is widely practised in other countries within and beyond the Southern African region. Admittedly, our jurisdiction has been slow in warming up to this development. The broadcast of court proceedings is inescapable when seeking to disseminate information concerning the administration of justice and enforcing accountability of the Judiciary. Few people are able to attend court proceedings at any given time, yet cases of public interest do not only affect the litigants before the courts. They also affect the interests of a large section of society. Many reasons explain this. One of the most common impediments is the location of the court. For instance, the Constitutional Court only sits in Harare, yet people from all corners

of the country are invariably interested in the proceedings before that Court. This results in operations of courts being considered as secretive by the public. As a result, the ordinary man and woman may view the decisions of the courts with suspicion. In order to enhance transparency and dispel notions of secrecy and suspicion, it becomes necessary for the courts to go beyond opening court doors to members of the public who are able to attend court and allow live broadcast of cases of public interest. Televising court proceedings allows the public to keep abreast of what happens during the exercise of judicial power. The public have the opportunity to observe first hand court proceedings as they unfold. They have the opportunity to learn how courts function in the process of hearing and adjudicating disputes between citizens on the one hand and citizens and the State on the other.

The unprecedented live broadcast of the Presidential poll petition in 2018 marked a new era for the Zimbabwean Judiciary. It demonstrated our Judiciary's commitment to upholding the values of **transparency and accountability**. In that case I noted that live broadcast of court proceedings promotes transparency and public confidence in the justice system. Fear of sensationalism is allayed through strict regulation of

the broadcasting process so as to protect the dignity of the proceedings. The factors often referred to in argument in support of live streaming through television of court proceedings are transparency, accountability, responsiveness and justice.

This case opened up a new window in the administration of justice in Zimbabwe. Soon after that, other cases of public interest were broadcast live in the Supreme Court. This trajectory is intended to foster public trust and confidence in the court system by debunking the myth that court proceedings are esoteric and that courts want to mask their decisions. The feedback the Commission received from the generality of Zimbabweans about the live broadcast of court proceedings has been positive. It vindicates our decision on the issue.

INTEGRATED ELECTRONIC CASE MANAGEMENT SYSTEM

At the beginning of 2019 I announced that the Commission intended to introduce an appropriate integrated electronic case management system (“IECMS”). The system is intended to harness the benefits of flexibility and automation which technology presents to the administration of justice. Automation of processes through use of Information

Communication Technology (“ICT”) has immense capability to foster transparency and improve access to justice. ICT affords great potential to automate court services and proceedings as a way to make the administration of courts more efficient, transparent and accountable. This would be achieved through the expediting of court procedures and the minimisation of direct human contact at certain stages of the process. That in turn would eliminate opportunities for corruption, while providing access to court information and statistics to the public. The system will be elaborate and consist of the following exciting features intended to aid court administration and case management -

- ***Increased public access to information***

The system will allow the public to find out the status of cases through electronic platforms viewable from public kiosks located in the registries of the courts. Those who are not computer literate will still get assistance from the court’s IT personnel to access the information they need electronically.

- ***Reduction of case backlogs***

The system will provide judicial officers with a dashboard meant to track the status of every case on the judicial officer's cause list. It will provide information, such as analysis of the age of cases, deadlines and case stages that require court action. This information will give Judges a more precise picture of the status of their cases.

- *Introduction of virtual court sittings*

Virtual court sittings transform physical court hearings into automated trial fora. This will enable parties to make submissions to the Judge without the need of having to appear physically in the courtroom.

The e-filing component of the system will also enable litigants to file pleadings and other court documents electronically from anywhere in the country. The procedure will reduce the cost of litigation, as expenses such as travelling will be curtailed.

I wish to advise that the Commission is relentless in the effort to ensure that this project succeeds. The process to introduce the Integrated Electronic Case Management System is now at an advanced stage. We had projected that the first phase of implementation of the system would commence in the last half of 2019. The elaborate procurement processes which come with the size of the project unfortunately

extended beyond the timelines we had set. As the Judiciary, and due to our status as a publicly funded institution, we are obliged to fully abide by existing procurement requirements. In the end, the target was inevitably missed. I am, however, happy to report that, in consultation with the Procurement Regulatory Authority of Zimbabwe, the necessary processes to procure the appropriate software have now been completed following a successful tender process. We anticipate the resolution of the remaining issues and finalisation of the consideration of the modalities relating to the commencement of the implementation of the project will be completed within the next few weeks. The first phase of the case management system, the roll-out of which is projected to take twelve months, will commence as soon as the loose ends are tied up.

As previously announced, the system will be customised to meet local requirements. It will be based on international best practices. Implementation will be on a court by court basis. May I reiterate that we remain committed to our pledge that when the Commercial Court finally opens its doors to the public, it must be the first paperless court in the country. All its processes and proceedings will be based on this

case management system. Renovations and customisation of Bristol House, which was specifically purchased to house the Commercial Court, have commenced.

To that end, we remain grateful to Government for its commitment to enhance access to justice. The Ministry of Finance has not hesitated to support the Judiciary by giving it the much-required budgetary support to enable this project to commence. It is my fervent hope that the budgetary allocations for the project will be released timeously to enable us to meet the project's set timeframes.

PERFORMANCE MEASUREMENT SYSTEM

I have, in previous addresses, commented that in times gone by the concept of judicial independence was misconstrued by many people to mean that judicial officers could not be asked to account for failure to perform judicial functions according to expected standards. As a result, performance measurement for judicial officers was unheard of. Contemporary society's understanding of the importance of functional judicial independence has disabused judicial officers, those in judicial administration and the legal profession of that misconception. It has

become the norm in modern democratic societies to subject members of the Judiciary to performance measurements and evaluation measures. Where performance is below expected standards, the causes of such underperformance are interrogated in order to come up with solutions which improve operations. The Zimbabwean Judiciary was one of the first to embrace this. Monitoring the performance of the Judiciary has worked wonders for the country. As will be alluded to later on in this address, the reduction of case backlogs across all courts is a direct result of the introduction of performance measurement of judicial officers and their courts.

I have appointed for the superior courts a Performance Management and Training Committee headed by the Honourable Deputy Chief Justice. The terms of reference of this Committee include engaging judicial officers and other stakeholders to come up with an acceptable and standardised performance measurement system for Judges. It is expected to present its recommendation early this year in order for us to implement the performance measurement system in the course of the year.

While it appears practical to scientifically evaluate the performance of judicial officers, it remains difficult to properly measure the performance of non-judicial members of staff. Yet it is accepted that these members of staff are a vital cog in the operations of the courts. Their performance always has an impact on the general performance of the organisation. It became necessary for the Commission to devise ways through which the performance of non-judicial members of staff could be measured. That step fulfils the basic requirements of good public administration and good governance.

A performance appraisal system is key to any institution seeking to remain relevant to the aspirations of the citizens. Performance appraisal systems assist progressive organisations in identifying good performers so as to reward them accordingly. They assist in singling out poor performers, thereby presenting the organisation with the opportunity to assist the employees concerned to improve on their performance levels.

In the course of 2019 the Commission introduced a home-grown performance appraisal system specifically designed for our members of staff. The system was designed following a benchmarking visit by the Commission's management team to Kenya, a jurisdiction which is

running a successful performance appraisal system. The team used the Kenyan model as a launch-pad to design our own system

ANTI-CORRUPTION INITIATIVES

At the beginning of 2019 I intimated that the Commission was putting in place measures to complement the Government's call for all institutions to join hands in the fight against corruption. This fight continues to gain traction. The fight becomes even more relevant this year in light of the theme we have adopted. Corruption is the antithesis of the concepts of **transparency and accountability**.

The UNDP Report on "A Transparent and Accountable Judiciary to Deliver Justice for All" states as follows:

"An independent and impartial judiciary is a cornerstone of the rule of law and of a democratic state. It serves to protect human rights and people's liberties, provides a check on other branches of government and helps secure an environment conducive to economic growth and social progress. Therefore, when corruption occurs in the judiciary, it undermines the very principles of fairness and due process of law and can negatively

affect much needed investment in developing countries. It erodes the public confidence that judicial outcomes are just and without undue pressure or influence from outside. Where this lack of confidence is strong and has become commonplace, it can weaken the legitimacy of an institution and the faith in democratic governance.”

During the course of 2019 the Commission scaled up its efforts in putting in place mechanisms connected with the fight against corruption. I advised in my address at the opening of the 2019 legal year that I had directed the Commission’s Secretariat to open more specialised anti-corruption courts at Masvingo, Mutare and Gweru. I am happy to announce that the target was exceeded, as the courts were not only opened at those stations but also at Marondera and Bindura. Those new courts are in addition to similar courts in Harare and Bulawayo.

Decisions or rulings in corruption cases made in the specialised courts were appealed against or taken on review to the High Court where they ended up on the rolls of ordinary cases. The determinations of the issues on appeal or review were delayed. A perception developed in the public

that the administration of justice was not serious about the publicly declared commitment to fight corruption. A decision was made to establish specialised anti-corruption courts in the High Court. The courtrooms for use by the Division are currently under renovations. In consultation with the Judge President of the High Court, I have since appointed Judges who will preside over the specialised anti-corruption courts in Harare and Bulawayo High Courts.

Whilst magistrates presiding over specialised anti-corruption courts have undergone several training sessions on how to deal with cases of corruption, the Judges are yet to receive that kind of professional development.

After noting the strides that other jurisdictions have taken in setting up similar courts, I made contact with my counterpart, the Honourable Chief Justice of Uganda, to seek assistance in the professional development of local judicial officers. Uganda has been running specialised anti-corruption courts for the last ten years. They have, as a jurisdiction, done exceptionally well in the adjudication of corruption related cases. I am positive that our judicial officers and other institutions involved in the fight against corruption will have a lot of

lessons to draw from Uganda’s experiences. A Judge in charge of the Uganda anti-corruption courts will be coming to Zimbabwe before the end of this month to share Uganda’s experiences with Judges and magistrates. We have also requested the same Judge to interact with other players in the justice sector, such as the National Prosecuting Authority (“NPA”), the Zimbabwe Anti Corruption Commission (“ZACC”) and the Zimbabwe Republic Police (“ZRP”).

We have made the call before and we will not tire of repeating that the fight against corruption requires the collective effort of all institutions involved in the administration of justice. Members of the public must also put their hands on deck. Investigators and arresting details must continue to sharpen their skills and make thorough investigations before arresting those suspected of engaging in corruption and bringing them to court.

Arrests must be based on the existence of a reasonable suspicion that the person has committed the offence with which he or she is charged. Ordinarily, when a decision is made to arrest a person on reasonable suspicion of having committed an offence, the intention would be to bring him or her to court for remand for trial. There must be knowledge

on the part of the investigating, arresting details and the prosecutor of the fundamental rights of an accused person, the enforcement of which would require a well thought out, carefully prepared and meticulously presented prosecution case to vindicate the administration of justice.

Weak prosecution cases must not be brought to court. They only serve to frustrate the ends of justice because the suspects end up being released at court for want of prosecution. That scenario lends credence to the notorious accusations of “catch and release” coined by some sections of society. The NPA must be careful, conscientious and professional in executing its constitutional mandate of prosecuting criminal matters in courts. It is the NPA that must also properly advise the investigating arms of the State, such as the ZRP and ZACC, on the strength of evidence required in each criminal case. If the NPA abdicates this crucial responsibility, the failure will serve to bring the administration of justice into disrepute as inconclusive evidence will be presented before the courts.

Legal practitioners are equally enjoined to play their constitutional role of representing their clients to the best of their abilities and in terms of the law. Legal practitioners are officers of the court and are expected

not only to assist the court arrive at just decisions but to behave ethically as well.

The courts themselves are expected to be diligent and properly manage cases that are brought before them, and to deliver decisions expeditiously. The courts remain the last bastion in the fight against corruption. A court that unnecessarily postpones matters and delays in the delivery of decisions is an obstruction to the administration of justice.

Allow me to restate that the fight against corruption must never be construed as a fight against suspects who are brought to court. It should never be interpreted as connivance by players in the justice sector to send innocent people to jail. The collaboration of players in the administration of justice is meant to result in an efficient justice system. That system will, on the one hand, ensure that those suspected of corruption but are innocent are quickly dealt with and discharged to allow them to continue with their lives, and that those who are guilty have their punishments meted out without delay on the other. It is important that, as the Chief Justice, I make these pronouncements because they resonate with the concept of the rule of law. Every person

arrested is presumed innocent until proven guilty and has a right to a fair trial before an independent and impartial court. This is a constitutional right that must be respected and cannot be derogated from. The limitations provided in **section 86 of the Constitution** do not apply to that right.

It is in this context that the law allows for pre-trial applications to be made by accused persons. Any such application must be determined by the courts without delay. It is however unethical for legal practitioners to abuse these legal processes by making unmerited applications that are solely meant to delay trials. It is unprofessional to make frivolous applications that are meant to frustrate the administration of justice. It is the responsibility of the courts to guard against such conduct and to make decisive and prompt decisions so that justice is seen to have been done. Meritorious applications of this nature must be granted without delay. Equally, non-meritorious applications must be disposed of without delay. This is a requirement of an efficient and effective administration of justice system.

The training of judicial officers will not be confined to anti-corruption initiatives. It is a priority focus area for the Commission in 2020. To

that end, the Commission will take advantage of gatherings such as the termly Judges' symposia and other ad hoc arrangements to ensure the continuing professional development of Judges. I am happy to advise that significant improvement has been noted in the quality of the work of magistrates in some areas, although there remains much room for improvement. Magistrates will undergo continuing professional development in issues such as analysis of facts and evidence as well as procedural aspects of their work in the course of the year. All non-judicial staff will also receive training in various areas. The issue of customer and client care will be top of that agenda in order to reemphasise the importance of the courts' twin principles of **transparency and accountability**.

OPEN DAY CONCEPT

A policy of transparency and access to information fundamentally enhances the level of trust and the legitimacy of Judges and others operating in the justice system. It does so by providing information that enables society to understand its operation, challenges and limitations. Transparency fundamentally reassures society that justice is served.

(See IDLO Article: <https://www.idlo.int/news/enhan...>).

Open days for the Judiciary are an international best practice. Many jurisdictions use them as a tool to cultivate relations between themselves and the public; to measure the effectiveness of their operations; and to get important feedback from the public and stakeholders. They are a hallmark of democratic institutions.

The theme of **transparency and accountability** requires the Commission to open itself and its operations to public scrutiny. It necessarily means that the Judiciary must open itself to allow Zimbabweans to appreciate how the courts function. In this respect, in 2020, the Commission will take the unconventional route to reserve a day on which members of the public will be allowed access to the courts, not for purposes of litigating, but to understand the functions of each court in terms of the law.

In recognition of the theme of **Transparency and Accountability**, I have authorised the Secretariat to commemorate the Judicial Service Commission Day. This will be an open day, during which members of the public and all stakeholders will be invited to visit court stations near their locations throughout the country to learn more about how the courts operate. They will be afforded the opportunity to have a closer

appreciation of the functions and duties of various offices within the Commission. It will also present an opportunity to school leavers to understand the various career opportunities available in the Commission. The public will be permitted to ask questions on matters that concern these institutions. They will even be able to raise complaints.

We believe that, by going that route, the Commission will have the opportunity to engage and interact with the public with a view to foster access to justice. The initiative will focus on increasing the visibility of our courts in the communities in which they are located. Every citizen must have basic knowledge of the operations of the courts. Above all, the exercise is intended to ensure that the courts are transparent and accountable to the public.

Allow me to advise that we have set the 10th of June of each year as the Judicial Service Commission Day. The choice of the day was not arbitrary. The 10th of June was the day in 2010 when the Commission, with its expanded mandate, came into existence after the promulgation of the **Judicial Service Act**. The day marked the complete separation of the administration of the affairs of the Judiciary from the Ministry

of Justice, Legal and Parliamentary Affairs. The declaration of the 10th of June out of all the other 364 days of the year is clearly befitting. In 2020 the date becomes even more relevant, as it marks a decade of the Commission's existence.

Allow me therefore to take this opportunity to urge all stakeholders and law-based organisations who may wish to collaborate with the Commission on this day to come on board. Members of the public are also urged to keep the date in mind in order to benefit from the interactions.

JSC WEBSITE

Disclosure and dissemination of information on the operations and administration of courts are pertinent steps in the Judiciary's quest to enhance **transparency and accountability** in the conduct of its business. In that regard, the publication of court judgments and court rolls, the provision of a complaints portal, and other functions on the JSC website is testimony to a Judiciary that is ready to be fair, transparent and responsive to the needs of the constituency it serves. To that end, the Commission maintains an active and highly interactive

website. The website is constantly updated by staff exclusively responsible for its maintenance. The team is headed by a full-time website administrator, whose sole mandate is to manage the site and ensure that it remains relevant and interactive.

This enables constant availability of information necessary to inform litigants and the public of what is happening in the courts. Due to the dynamism of technology, the Commission will continue to seek ways of improving the website.

In order to keep abreast with modern trends of information management and dissemination, the Commission has for the first time in its history employed a communications officer. His major responsibility is to manage the communication affairs of the organisation by disseminating information to the public and to attend to inquiries from stakeholders including the press. Ordinarily, the Judiciary does not involve itself in debates and conversations that are in the public domain. The usual way through which the Judiciary communicates with the public is court judgements. Only on rare occasions such as this ceremony does the Judiciary publicly speak about its affairs.

As already highlighted, we acknowledge that it is time that the Judiciary starts to gradually move from that stereotype of secrecy. A lot of information about the Judiciary is circulating in the public space, particularly on social media. Most of that information is inaccurate whilst a large portion is false, and at times blatantly malicious. More often than not, it is simply intended to scandalise the Judiciary and the Judicial Service. Such false narratives, if left unexplained, only serve to malign the courts and personnel working in the courts. In the spirit of **transparency and accountability** the Commission will, through the communications officer, inform the public on pertinent issues involving the Judiciary. It is the Commission's desire to continue enhancing the Judiciary's relationship with its stakeholders, including members of the public.

JUDGES' RECRUITMENTS

The new **Constitution** ushered in a paradigm shift in the appointment of Judges. **Section 180 of the Constitution** requires that whenever there is a vacancy for a position of a Judge, such vacancy must be advertised and interviews of prospective candidates be conducted in public. The Commission has, over the years, consistently complied

with the law. Various positions for Judges of the High Court and Supreme Court have been filled in accordance with the constitutional requirement. That provision is intended to ensure **transparency and accountability** in the manner the positions of Judges are filled, which in turn enhances the independence of the Judiciary.

I acknowledge that stakeholders and the public may accord different interpretations to **section 180 of the Constitution** and how it should be implemented by the Commission. Those divergent viewpoints are expected in a dynamic constitutional democracy such as ours. What remains important is that Zimbabwe has not floundered in complying with its **Constitution**.

The transparency in the appointment processes of the Commission is not limited to Judges. It transcends to the appointment of all members of the Judicial Service. The **Judicial Service Regulations, 2015** require all appointments and promotions in the Judicial Service to be done transparently and to be based on merit. As Chief Justice I have, at all times, ensured that these principles are complied with.

COMPLAINTS HANDLING (INCLUDING FROM INMATES)

The Commission has put in place mechanisms to curb impropriety among its rank and file. This is intended to mitigate opportunities for abuse of power and corruption. The Commission, to that end, maintains a robust complaint handling procedure as a tool for detecting unethical behaviour by its officers. It also serves as a deterrent against those who might be inclined to engage in such practices. Whenever a complaint is raised, the policy requires that each complaint be timeously and thoroughly investigated. Where a complaint is established to be meritorious, swift and decisive corrective measures including disciplinary action are taken. The complaints handling system is implemented by -

- (i) the JSC Secretariat which receives the majority of complaints;
- (ii) each Head of Court; and
- (iii) the Office of the Chief Justice.

From these complaints, it has been noted that whilst a significant number have merit, a worryingly high percentage relates to complaints against Judges and magistrates for decisions that they make in court. Such complaints, where no extra-judicial impropriety is alleged, are not

dealt with administratively but through the legal processes of review or appeal. We always endeavour to advise parties to follow that route.

Our complaints handling system has also had a positive impact with prisoners who are not legally represented and who would want to prosecute appeals or reviews of their matters. We receive numerous complaints from such inmates. Their complaints are attended and responded to with equal attention. I am happy to note the massive impact which the system has had.

INFRASTRUCTURE DEVELOPMENT AND PROJECTS

In 2019 the Commission undertook an aggressive infrastructure refurbishment and construction programme as part of its access to justice agenda. The programme was informed by the state of disrepair of some courthouses and the desire to continue decentralising the courts and establish new Divisions of some courts.

In that regard, I intimated in 2019 that the Commission intended to relocate the Labour Court into a building which had been acquired and was being renovated and customised for that purpose. I am again proud to report that the building has been turned into one of the Commission's

flagship courthouses. The completion of the renovations and customisation culminated in an official commissioning of the building by His Excellency, the President of the Republic of Zimbabwe on 14 May 2019. The elegant courthouse boasts of enough space for Judges' chambers, courtrooms, registries and other offices for members of the support staff.

The construction of Lupane Magistrates' Court commenced during the last half of 2019. The progress at the site is very encouraging. More than 80% of the building material has already been procured in a bid to contain the escalating cost of the material. With this rate of progress, it is projected that the courthouse will be ready for occupation by the end of 2020. The construction of Mt Darwin Magistrates' Court is 90% complete. The new courthouse will be ready for use in the first half of 2020. The construction of the imposing provincial court complex at Chinhoyi is progressing according to set projections. The structure is now nearing completion. The contractor, who has been very professional, is now working on the finishings. I am also positive that the court will be opened during the first half of 2020. The construction of Gwanda Provincial Court, which had stalled during the course of the

year under review, is back on course. Significant progress is expected to be made by the contractor towards completion of the project.

I reported at the beginning of 2019 the Commission's desire to decentralise court services to high density suburbs in the metropolitan provinces of Harare and Bulawayo. In that regard, I also advised that Epworth Town Board allocated the Commission land on which to construct a courthouse. I am happy to announce that all the preliminary work has now been completed. The procurement of building materials has commenced. The construction of the courthouse is expected to start in earnest during the course of the year.

Having completed the establishment of the High Court in Masvingo and Mutare in the last couple of years, the Commission is considering modalities of implementing the next phase. The choice of the next High Court station will be largely informed by the availability of infrastructure suitable for renovation and customisation into a proper courthouse or the availability of land on which to construct a courthouse. The proposed provinces which are a priority for the High Court at the moment are the Midlands and Matabeleland North.

The project at Bristol House, which is earmarked to house the Commercial Court Division of the High Court, is set to be the Commission's flagship project for the year 2020. The plan is to renovate and customise the building into a world class courthouse with state-of-the-art equipment, including the Integrated Electronic Case Management System. As advised earlier, work at the building has commenced. Barring unforeseen challenges, the renovations and customisation are projected to be complete by the end of the year.

The Judiciary, as part of its responsibility to support national programmes, fully embraced the government's Ease of Doing Business initiative. To that end, commercial courts and small claims courts were established at all provincial magistrates' courts across the country. The drafting of Commercial Court Rules for the High Court is now complete. The draft rules have been forwarded to the Ministry of Justice, Legal and Parliamentary Affairs for legislation. In that regard, I wish to publicly acknowledge the good work done by the Commercial Court Rules Committee led by Honourable Justice Mafusire. The other members of the team are senior legal practitioners Mr Edwin Manikai, Mr Addington Chinake and Mr Tinoziva Bere. I have since appointed

the same team to draft the Magistrates' Commercial Court Rules. They have all graciously accepted the new mandate.

The requirement for justice to be dispensed from clean halls of justice and the desire to continue taking the courts closer to the people are issues that are very close to my heart as Chief Justice. It pains me to note that the state of some of our district courts is far from satisfactory. For instance, Mutawatawa Magistrates' Court still operates from a composite building which houses the District Development Coordinator's office among other government institutions. In that building, all court staff including the magistrate share three tiny offices. There still exist courthouses constructed under prefabricated materials at Murewa, Chiredzi, Esigodini, Tsholotsho, Guruve and Mutoko. These courthouses were constructed to serve as temporary structures during times of our greatest need. The materials were never meant to endure for eternity. Predictably, they have seen better days and are no longer in good condition. This is unacceptable and must be rectified. Our intervention is therefore required sooner rather than later.

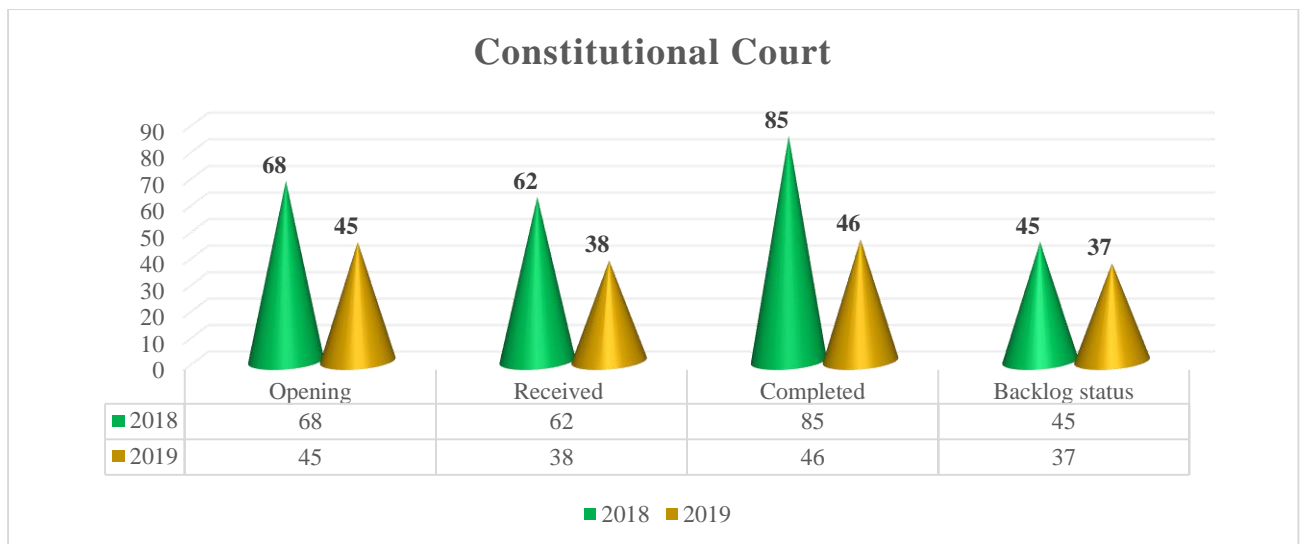
On another sad note, there are still various districts in the country which do not have resident courts. It is a priority for the Commission to

establish at least one resident court in each district of the country. Some of the affected districts include Mbire, Rushinga and Shamva in Mashonaland Central Province; Chimanimani in Manicaland; Gokwe North in Midlands; Bulilima, Insiza and Mangwe in Matabeleland South; Umguza in Matabeleland North; and Makonde, Zvimba and Hurungwe in Mashonaland West. Residents of these districts still travel unacceptably long distances to access the nearest court stations.

COURTS PERFORMANCE

As has become the trend in recent years, the performance of all courts continues to be impressive. I now wish to share with you the statistics on court performance for the year under review.

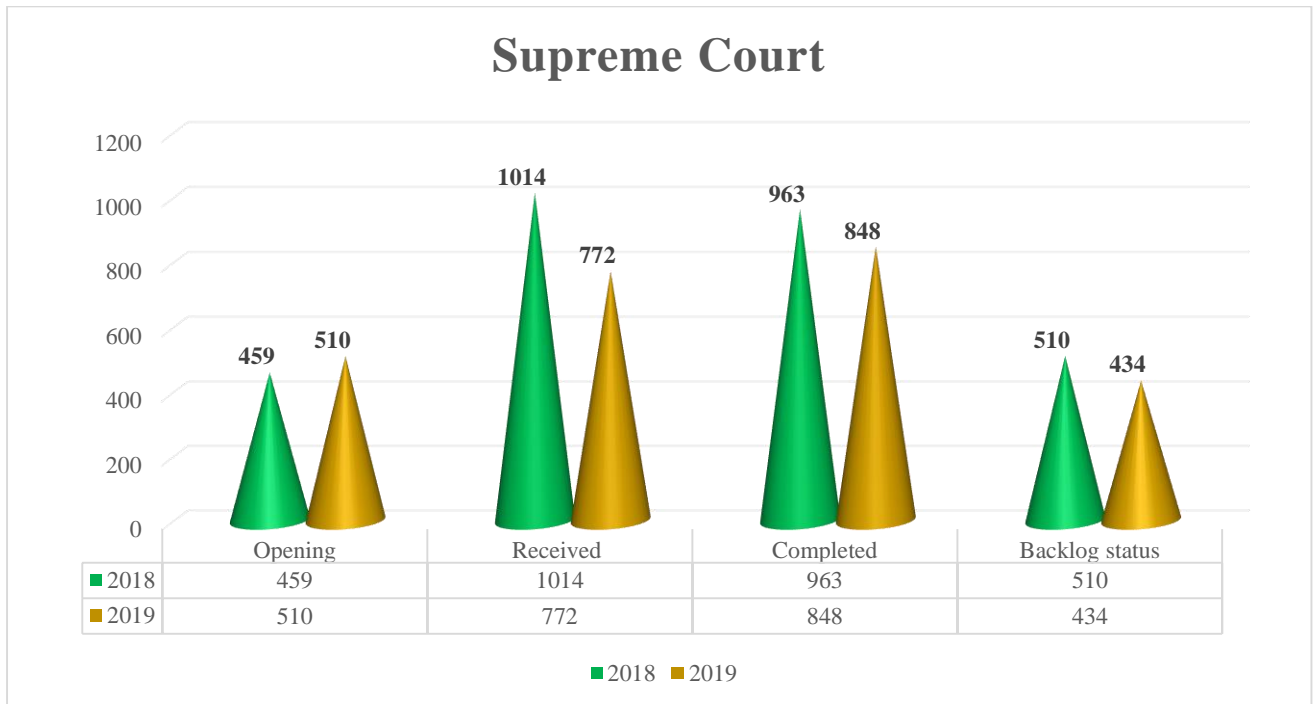
Constitutional Court



In the Constitutional Court, a downward trend for the pending cases was maintained from 2018. The court opened the year with **45** cases. During the course of the year, **38** cases were received bringing the total to **83**. Forty-six (**46**) matters were finalised which means that the pending cases were reduced from **45** to **37** cases.

It is worth noting that only **38** new cases were received in 2019 as compared to **62** cases received the previous year. It is my belief that lawyers are now taking heed of our advice that only serious matters of constitutional significance must be brought before the apex court. Equally, we have seen a huge drop in matters referred from the Magistrates' Courts. This may be attributable to the training of magistrates that was conducted on referral of matters to the Constitutional Court.

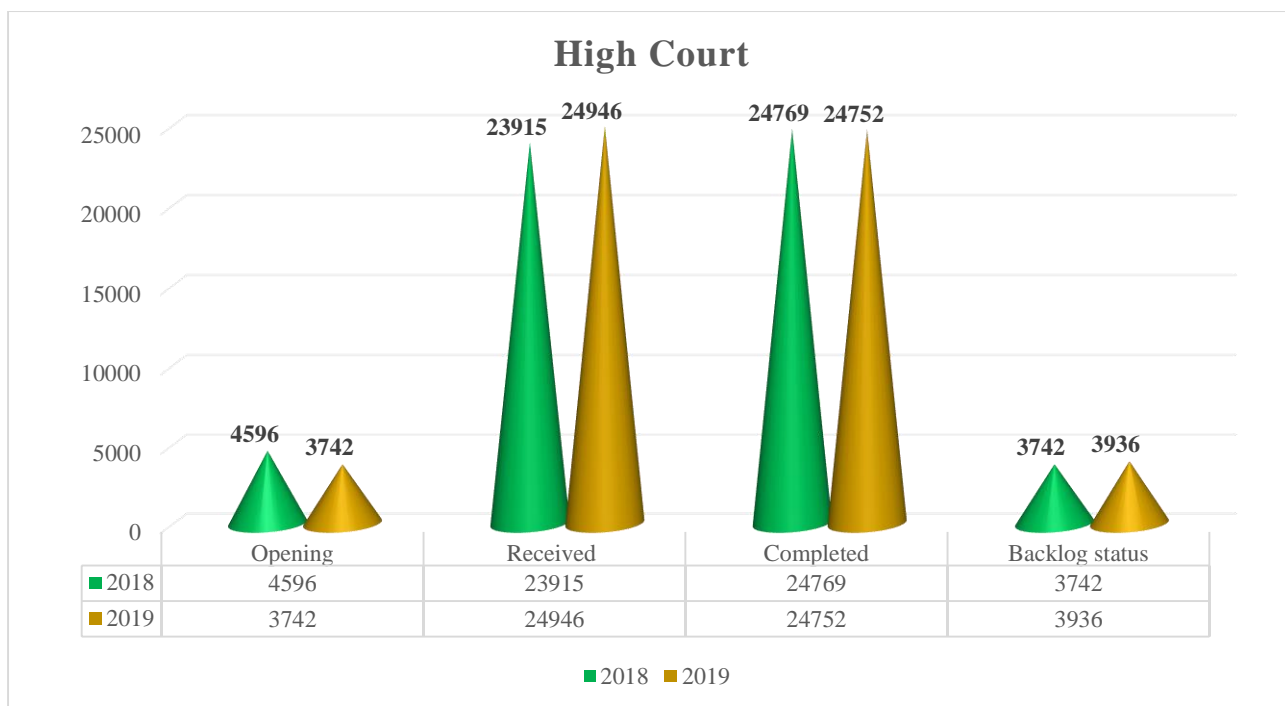
Supreme Court



The performance of the Supreme Court was commendable. The court's pending matters receded by **15%** from **510** cases in January 2019 to **434** cases at the close of the year. I must mention that the above achievement came as a result of hard work. In addition to **510** pending cases that the court opened the year with, it received **772** new cases and completed **848** cases.

This is against the background that the Judges of this court also double up as Judges of the Constitutional Court. The separation of the two courts will further increase pressure on this court this year.

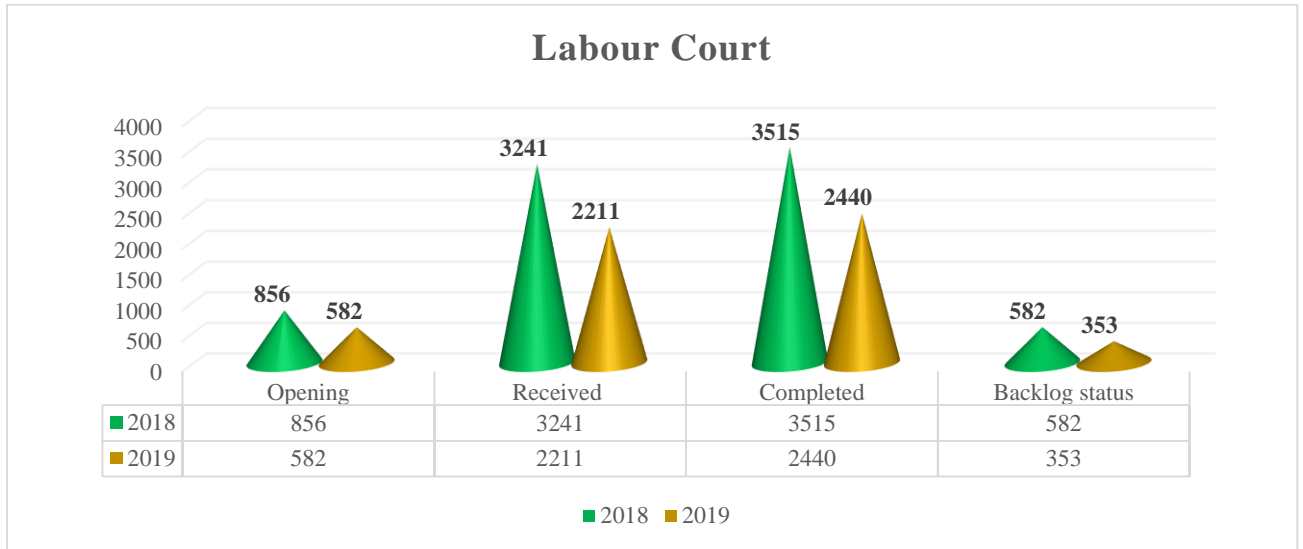
High Court



The High Court opened the period under review with **3 742** pending cases. Twenty-four thousand nine hundred and forty-six (**24 946**) new cases were received to make a total of **28 688** cases. With this huge number of cases, the court managed to finalise **24 752** matters to close the year with **3 936** pending cases. Given that there are 39 Judges on the High Court Bench, this translates to each Judge completing **635** cases per year on average. Put differently, on average each Judge completed **212** cases per term. These figures testify to the huge workload that Judges have to bear due to the shortages we are currently experiencing. The recent addition of five new Judges to this court will

go a long way to alleviate the burden, although the staffing levels remain critical.

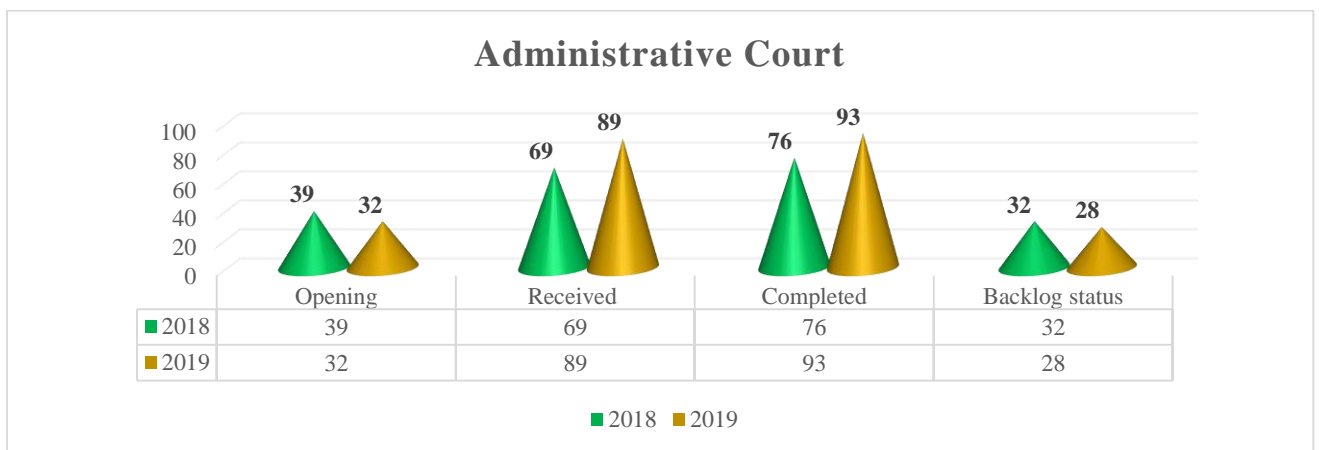
Labour Court



Once again, performance of the Labour Court was satisfactory in 2019.

The court started with **582** cases at the beginning of the year and received **2 211**, making a total of **2 793** cases. Of these, it completed **2 440**, thus remaining with **353** cases.

Administrative Court

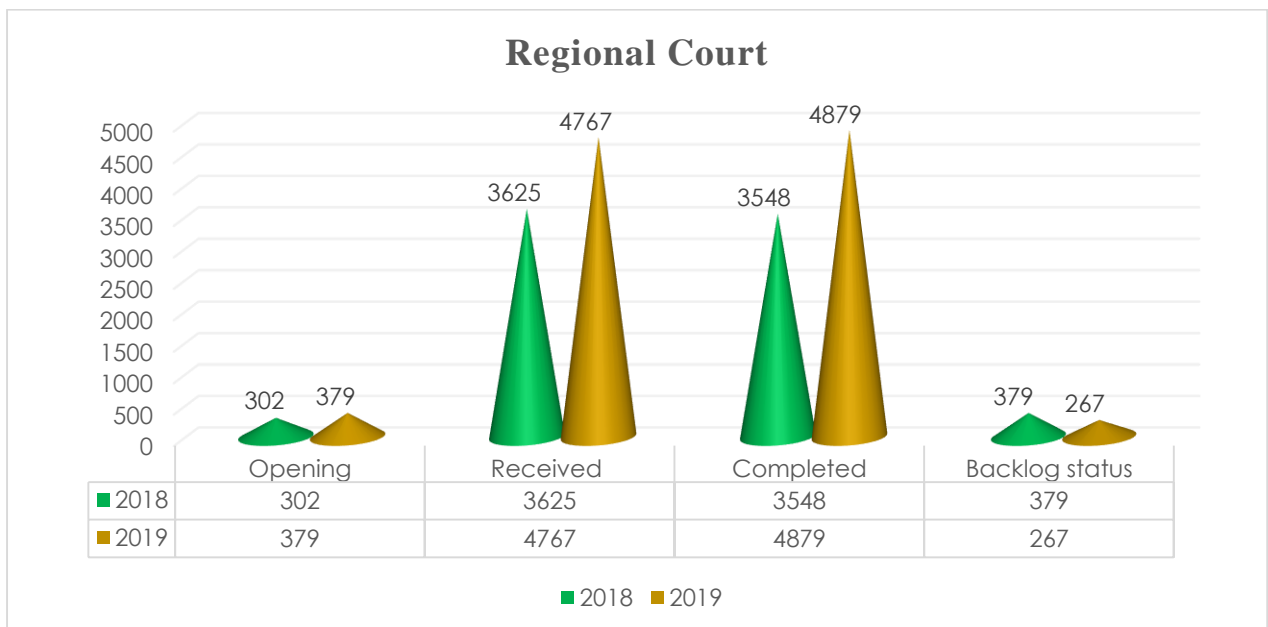


In 2019, the court received slightly more work than it did in 2018. As at the beginning of 2019, there were **32** pending cases and the court received **89** new matters bringing the total to **121** cases. The Judge cleared **93** matters to close the year with **28** cases. The performance was satisfactory.

The Magistrates’ Court

Overall, the Magistrates’ Court posted impressive results during 2019.

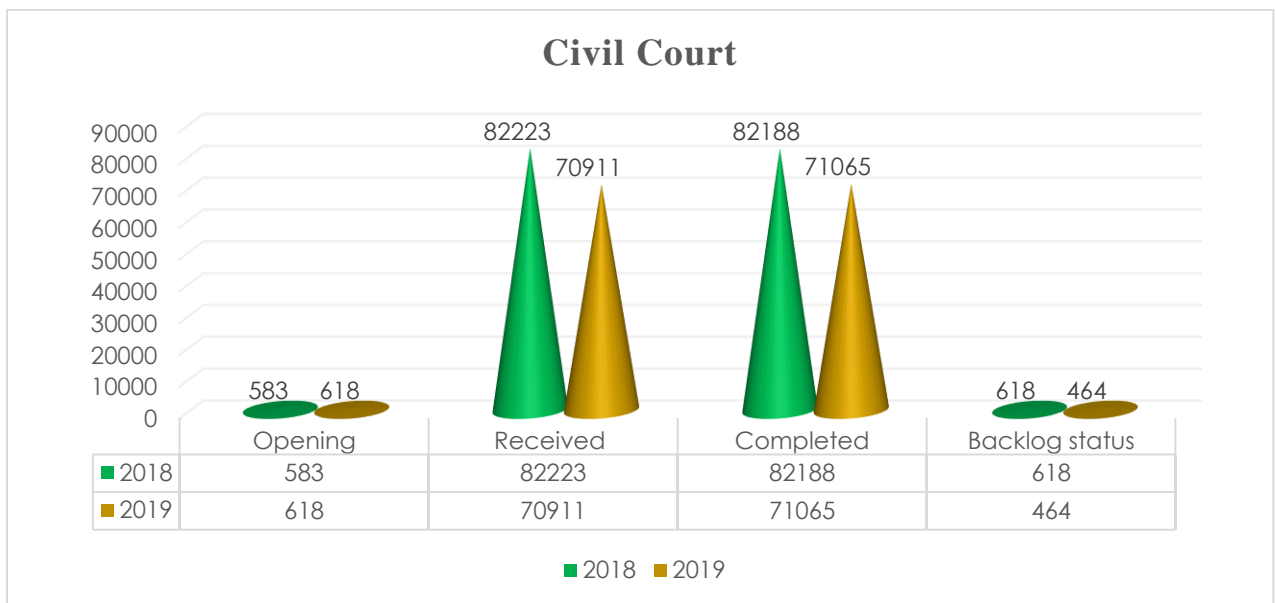
Regional Court



The Regional Divisions recorded a surge in the number of cases received in 2019, totalling **4 767** cases compared to **3 625** cases received in 2018.

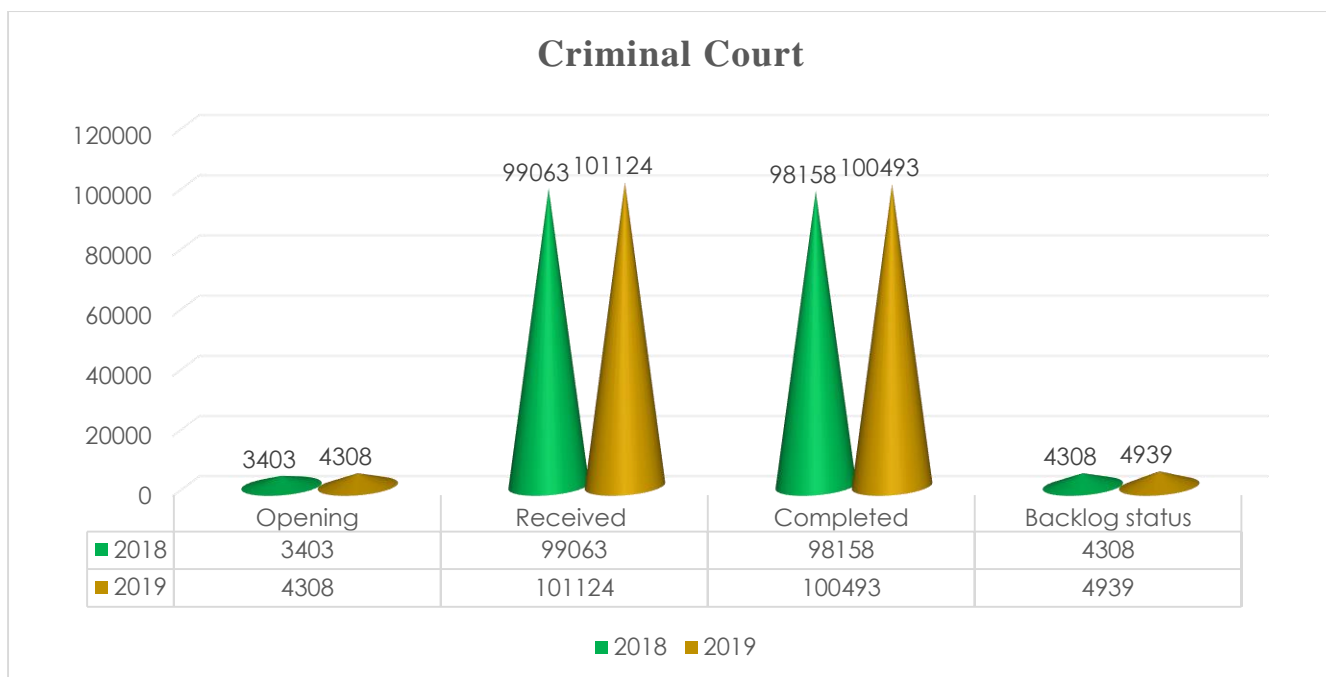
The Divisions completed **4 879** cases in 2019, a **38%** increase in completed cases compared to 2018. Resultantly, the Divisions, which had opened the year with **379** cases, had **267** pending cases at the end of 2019.

Civil Courts



At the beginning of 2019, the Civil Division had **618** pending cases. During the course of 2019, **70 911** cases were received. Of the total **71 529** pending cases, **71 065** cases were completed, leaving a total of **464** pending cases. The backlog went down by **25%**.

Criminal Courts



The Provincial Criminal Division had **4 308** cases as at 1 January 2019.

A total of **101 124** cases were received during the course of 2019. The

rise in criminal cases received is explained by the influx of public

violence cases in January and August 2019. When the public violence

cases were brought, the courts prioritised the trial of such cases. That

strategy resulted in the unprecedented clearance of the cases. I wish to

comment in the same vein that while citizens' constitutional right to

protest and to petition in terms of section 59 of the Constitution cannot

be questioned and should be protected always, it remains unacceptable

to engage in violence. Violence is likely to result in the loss of life,

injury to other citizens and wanton destruction of property. While the

overall backlog of criminal cases marginally rose by **15%** at the end of 2019, the commendable hard work of magistrates is demonstrated by the fact that whilst **98 158** cases were completed in 2018, the total number of cases completed in 2019 rose to **100 493**. That figure represents a **2%** increase in the output of the courts. The backlog in the Criminal Division stood at **4 939 cases** at the end of 2019.

As we speak, the country is gripped by another spate of violence perpetrated by the so-called machete gangs. The Judiciary acknowledges the work being undertaken by law enforcement agencies in bringing perpetrators of that wave of violence to book. May I assure the nation that the courts stand ready to decisively deal with those accused of these offences in accordance with the law. Special courts to specifically try the cases have been set up in all affected areas across the country.

I call upon all stakeholders in the administration of justice to make concerted efforts to end this problem. Institutions mandated to protect the citizens cannot sit back and watch a few rogue elements terrorise the entire nation for their selfish benefits. We hear stories of callous murders of ordinary Zimbabweans and law enforcement agents.

Citizens' rights of freedom of movement, freedom to conduct their affairs without fear and freedom of association are being violated with impunity by the gangsters. The organised terror gangs have the potential to create anarchy if they are not quickly neutralised.

Courts must demonstrate to the public that they are possessed of real capacity to enforce the law and punish crime.

CHALLENGES

The Commission's achievements enumerated above did not come without challenges. Like any other publicly funded institution in the country, the Commission faced a myriad of hurdles in 2019.

Budgetary support

Although the economic environment remained relentlessly tough, Treasury appeared to do all in its power to give budgetary support to the Judiciary. The achievements I have illustrated above would not have been possible without that support of Treasury. In that regard, I wish to put on record the Judiciary's and the Commission's appreciation of the efforts by Treasury in releasing funds for court operations during the period under review.

Evidently, the appropriated funds availed to the Commission were far short of its projected bid in 2019. It, however, remained incumbent upon us to optimally utilise the small allocation in order to progressively realise the Commission's constitutional mandate.

The effort by Treasury to financially support the Commission may be evident. The Commission remains of the view that the method of allocation of approved budgets by Treasury to the Judiciary must be reformed. Whilst on paper the Commission is allocated a stipulated budget, in reality the Judiciary is still begging officers in the Ministry of Finance for the release of those budgeted funds. Times without number the Commission is directed to justify its requests for funding, yet the approved budget proposals clearly stipulate what the funds should be utilised for. This method does not only detract from efficient implementation of projects but, in a large measure, retards court operations and casts aspersions on the independence of the Judiciary.

When funds are released in dribs and drabs, the Commission is placed in a difficult position to fund its projects and court operations. The requirement for resources to run both resident and circuit courts is recurrent. Funds must therefore be readily available for that purpose.

The ideal scenario in the circumstances is to allow the Commission to access its entire budget at the commencement of each financial year. At the end of each year, the Commission's funds and all its expenditures are fully accounted for through the various audit exercises that are carried out. The Commission also presents reports to Parliament and appears before the Parliamentary Committee on Justice in terms of the law. It is our sincere hope that Treasury will without delay address this critical issue.

Conditions of service

I wish to commend the government for reviewing the salaries and allowances of members of staff at a time when the existing salaries were no longer adequate to even sustain the employees' transport costs to and from work for a month. While this went a long way to mitigate the attendant inflation induced challenges which had made the wages virtually valueless, I wish to take this opportunity to implore government to continually review the earnings in tandem with the rising cost of living.

Conditions of service for members of staff are a sensitive area because a demotivated workforce will not produce desired results. Salaries of judicial officers remain divorced from the reality of the importance of the judicial functions they perform. Efforts to fight corruption must be complemented by awarding judicial officers and their support staff a living wage to prevent them from being tempted into accepting bribes or other undue considerations.

SEPARATION OF THE CONSTITUTIONAL AND SUPREME COURTS

Clause 18 of the Sixth Schedule to the Constitution provides that Judges of the Supreme Court would sit together with the Chief Justice and the Deputy Chief Justice as the Constitutional Court for a transitional period of seven years from the date of publication. This transitional period will come to an end on 22 May 2020. Implementation of plans for the total separation of the two courts has already commenced. The two courts were physically separated on 1 January 2020. It must be noted, however, that legally full separation will only become possible after 22 May 2020. In that regard, the two courts will continue to operate in the current manner until that date

arrives. Stakeholders will be advised in due course of the ceremony to be held to formally mark the separation.

It is appropriate for me at this stage to congratulate Mr Justice C. Hungwe JA and Mr Justice N. Mathonsi JA on their elevation to the Supreme Court Bench.

In another development and in clear acknowledgment of the competency of the Zimbabwean Judiciary, Honourable Hungwe JA was seconded to the superior courts of Lesotho under a programme initiated by SADC to assist the nation of Lesotho in dealing with serious criminal matters which were threatening to overwhelm the judiciary of that country. As the Chief Justice, I note with pride the vote of confidence that the region continues to pass on the competence of our Judges.

I also wish to congratulate Kabasa J, Dube-Banda J, Musithu J, Zisengwe J and Chinamhora J on their recent appointments to the High Court Bench. It is my hope that their appointments will significantly improve the operations of the High Court and go a long way in reducing the workload in that court.

CONCLUSION

As I conclude it will be remiss of me not to acknowledge the cooperation which we received during the period under review from various stakeholders and partners. These are as follows - the Ministry of Justice, Legal and Parliamentary Affairs, the Ministry of Finance and Economic Planning, the Ministry of Public Works and National Housing, the Law Society of Zimbabwe, the National Prosecuting Authority, the Office of the Attorney-General, the Zimbabwe Prisons and Correctional Service, the Zimbabwe Republic Police, and various non-governmental organisations who partnered with the Commission in a number of initiatives during the course of the year. I wish such cooperation to continue in the current year.

I also wish to commend all judicial officers, the JSC Secretariat and all members of the support staff for the excellent work they did in 2019 to ensure that the courts achieve the impressive results they posted. Well done to all of you.

On 14 February 2020 five Judicial Service Commissioners will be leaving the Commission due to the expiry of their terms of office in terms of section 189(3) of the Constitution. A public statement in

appreciation of their invaluable contribution to the improvement of the administration of the Judiciary will be made at the appropriate time. On behalf of the Judiciary and on my own behalf I wish to publicly thank the five Commissioners for their hard work and dedication to duty during their time in office.

Before the Court takes an adjournment, I will ask Father Philip Kembo of the Roman Catholic Church to lead us in prayer.